

REMARKS

The Remarks of the Reply filed September 7, 2005, are respectfully repeated by reference, including applicants' traversal of the restriction requirement for the reasons set forth therein, and also bearing in mind the two new linking claims 19 and 20.

As regards the Notice of Non-Compliant Amendment, undersigned has learned that the designation "Withdrawn" does not really mean "Withdrawn", but instead means not elected. This is stated on an FAQ which is on the PTO website. We have been informed by the PTO Office of Patent Legal Administration as follows:

In the rule making that revised amendment practice, the status identifier "withdrawn" was identified as being for a claim still in the application, but in a non-elected status. See *Changes to Implement Electronic Maintenance of Official Patent Application Records*, 68 Fed. Reg. 38611, 38616 (June 30, 2003). The use of the status identifier "withdrawn" does not mean that an applicant is making an election without traverse. It is merely an indication that the claim is directed to a non-elected invention. Furthermore, the examiner can still rejoin withdrawn claims when appropriate.

Undersigned, on behalf of applicant, respectfully objects to the aforementioned PTO practice, as the designation of claims as "withdrawn" could be improperly interpreted as the applicant consenting to a withdrawal of any claim so designated, which is certainly not the case when an applicant traverses the requirement.

Considering the plain meaning of the word "withdrawn", the PTO should be cognizant that claims are not actually "withdrawn" until and unless the examiner repeats and

makes final the restriction requirement. Certainly, there are times when a traversal of a restriction requirement is convincing and the restriction requirement is withdrawn. By the PTO interpretation of the rule, i.e. 37 CFR 1.142(b), the claims will have been already marked "withdrawn" when the restriction requirement is withdrawn, thereby reinstating the non-elected claims.

Designating the claims as "withdrawn" also tends to prejudice any further consideration by the examiner of the requirement which has been traversed. Moreover, the mere designation "withdrawn" is likely to cause many examiners to simply ignore the claims.

Accordingly, applicant's required designation of the claims as "withdrawn" is not to be taken as any acquiescence by applicant that such claims are actually withdrawn until and unless the requirement has been repeated and made final, and then only subject to applicant's right to petition.

Respectfully submitted,

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